

shall not preclude the Administrator, FSA, the Executive Vice President, CCC, or a designee of such person from determining any questions arising under the regulations or from reversing or modifying any determinations made pursuant to such delegation. Further, the Director of TPD, FSA, may authorize the waiver or modification of deadlines and other requirements, except statutory deadlines or requirements, in cases where lateness or the failure to meet such other requirements does not adversely affect operation of the program.

[56 FR 16230, Apr. 19, 1991, as amended at 66 FR 1810, Jan. 10, 2001]

#### § 1446.103 Definitions.

For purposes of this part, the definitions and provisions of parts 718, 719, 729, 780, 790, 791, 793, 1400, 1402, 1403, 1407, 1421, and 1422 of this title are incorporated and shall apply except where the context or subject matter or provisions of the regulations in this part otherwise requires or provides. References contained in this subpart to other parts of this chapter or title include any subsequent amendments to those referenced parts. Unless the context indicates otherwise, any reference to the Executive Vice President of CCC shall also be read to mean to any persons designated by the Executive Vice President. Unless the context or subject matter otherwise requires, the following words and phrases as used in this part and in all related instructions and documents shall have the following meanings:

*Additional loan rate.* The price support loan rate that is applicable to a lot of additional peanuts.

*Additional peanuts.* Any peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

*Adequate assets.* Assets less liabilities determined by the marketing association, acting pursuant to instructions of CCC, to be sufficient to assure the export or crushing of contract additional peanuts in compliance with the provisions of this part. Assets may include, but are not limited to, accounts receivable, value of inventory, equipment, plant, property, and investments. Liabilities may include accounts payable,

mortgages, loans, letters of credit and other obligations.

*Adequate facilities.* Weighing, grading, shelling and/or milling equipment, storage facilities, and other physical plant and equipment owned, leased or subleased by a handler, as determined by the marketing association to be sufficient to receive, store, process, and ship all the contract additional peanuts to be handled in, by, through, or in connection with such facilities into the export or domestic market.

*All other (AO) kernels.* The peanut kernels remaining in the total kernel content of a lot of peanuts after excluding sound mature kernels and sound split kernels. AO kernels consists of damaged kernels, other kernels, and loose shelled kernels, as identified and determined by the Federal-State Inspection Service.

*FSA.* The Farm Service Agency of the United States Department of Agriculture.

*Bright hull Valencia peanuts.* Valencia type peanut produced in the Southwest for which not more than 25 percent of the shells are damaged by:

- (1) Discoloration;
- (2) Cracks or broken ends; or
- (3) Both discoloration and cracks or broken ends.

*Buyback.* A term used to describe a marketing transaction in which a producer places additional peanuts under loan at the additional loan rate and a handler simultaneously purchases such peanuts from the marketing association for seed or other domestic edible uses.

*CCC.* The Commodity Credit Corporation, an agency and instrumentality of the United States within the United States Department of Agriculture.

*Commercial quantity.* For purposes of determining penalties that may be due if additional peanuts that were exported are subsequently reentered into the United States, commercial quantity means any quantity of such peanuts that were reentered by any person during any marketing year if the total quantity reentered by such person or a related person exceeds 200 pounds of farmers stock peanuts or 150 pounds of shelled peanuts.

*Concealed rancidity, mold or decay (RMD).* Peanut kernels affected by rancidity, mold or decay which is not apparent by external examination.

*Contract additional peanuts.* Additional peanuts for crushing or exportation, or both, for which a contract has been entered into between a handler and producer in accordance with this part.

*Crushing.* The processing of peanuts to extract oil for food uses and meal for uses as allowed by the provisions of this part or the processing of peanuts by crushing or otherwise when authorized by the Secretary.

*Current marketing year.* The marketing year that begins on August 1 during the calendar year in which the applicable crop of peanuts was planted.

*DAFP.* The Deputy Administrator for Farm Programs, FSA.

*Damaged kernels (DK).* Defective whole kernels which ride the screen officially designated for the peanut type, and the defective splits found in farmers stock which, as determined upon an official inspection by an inspector:

- (1) Are rancid, decayed or moldy;
- (2) Have sprouts more than  $\frac{1}{8}$  inch long;
- (3) Are affected by insects, worm cuts, web or frass;
- (4) Are dirty, with appearance materially affected;
- (5) Are affected by flesh discoloration or skin discolorations affecting more than 25% of the surface; or
- (6) Are affected by freezing, or have any characteristic of freeze damage.

*Dark hull Valencia peanuts.* Valencia type peanuts that are produced in the Southwest and that do not meet the requirements for bright hull Valencia peanuts.

*Director.* The Director, or Acting Director, Tobacco and Peanuts Division, Farm Service Agency, U.S. Department of Agriculture.

*Dollar value.* An amount determined as follows:

- (1) For inspected peanuts, the total of the amounts determined from each applicable form FSA-1007, Inspection Certificate and Sales Memorandum, by multiplying the applicable quantity by the quota loan rate that would apply to peanuts of the type and quality recorded on such form FSA-1007 without

regard to whether such peanuts were found to contain visible *Aspergillus flavus* mold.

- (2) For noninspected peanuts, the amount determined by multiplying the quantity involved by the national average price support rate for quota peanuts.

*Domestic edible use.* Domestic edible use means:

- (1) Use of peanuts for milling to produce domestic food peanuts (including the processing of peanuts into flakes);
- (2) Use of peanuts for seed, excluding unique strains which meet both of the following requirements:
  - (i) They are not commercially available, and
  - (ii) They are used exclusively for the production of green peanuts; and
- (3) Use of peanuts on a farm.

*Edible export standard for contract additional peanuts.* The standards for raw shelled or in-shell peanuts of any crop exported for human consumption constituting U.S. Standards grade requirements, or modifications thereof, and requirements as to wholesomeness, as are specified in the outgoing quality regulations for such crop as set forth in the Marketing Agreement No. 146, Regulating the Quality of Domestically Produced Peanuts (the Peanut Marketing Agreement No. 146), except that peanuts shown by the applicable form FV-184-9, Federal-State Inspection Certificate (Peanuts), to deviate from these requirements shall be considered as meeting such requirements if the handler certifies to the marketing association that such deviations are:

- (1) Acceptable to the export buyer; and
- (2) Fall within the range of deviations allowable under the Peanut Marketing Agreement No. 146.

*Eligible country.* With respect to credit for exportation of additional peanuts, any destination outside the United States for which an export license may be acquired, except that with respect to the 1991 crop, neither Canada nor Mexico shall be considered an eligible country for the purpose of exporting peanut products other than treated seed peanuts.

*Eligible peanuts.* Eligible peanuts are farmers stock peanuts that:

(1) Were produced in the United States by an eligible producer;

(2) Were planted during the year in which the current marketing year begins;

(3) Are free and clear of any liens and encumbrances, except a statutory lien that has resulted from failure to pay a peanut poundage quota penalty, unless acceptable waivers are obtained;

(4) Unless otherwise approved by the Executive Vice President, CCC, were produced in the area served by the marketing association through which the price support loan is being requested;

(5) Were not produced on land owned by the Federal Government if such land is occupied without a lease permit or other right of possession;

(6) Have been inspected and have an official grade determined by a Federal or Federal-State inspector; and

(7) Must, if delivered to the association in bags in the Southwestern area, be in new or thoroughly cleaned used bags which:

(i) Are made of material other than mesh or net, weighing not less than 7½ ounces nor more than 10 ounces per square yard and containing no sisal fibers;

(ii) Are free from holes;

(iii) Are finished at the top with either the selvage edge of the material, a binding, or a hem; and

(iv) Are uniform in size with approximately a 2 bushel capacity.

*Eligible producer.* An eligible producer for purposes of price support under this part shall be a person who meets all of the following:

(1) As a landowner, landlord, tenant, or sharecropper, the person produced the peanuts that are being pledged as collateral for a price support loan or is a bona fide successor to such person.

(2) The person has beneficial interest in the peanuts that are being pledged as collateral for a price support loan and had such beneficial interest before such peanuts were harvested.

(3) The person is in compliance with the provisions of:

(i) Part 12 of this title relating to persons producing agriculture commodities on wetlands or highly erodible land.

(ii) Part 796 of this title relating to growing a controlled substance.

(iii) Part 1400 of this title relating to the eligibility of foreign persons for loans or benefits.

(iv) Part 400 of this title relating to crop insurance requirements.

(4) The person has not marketed 100 percent of a quota peanut crop that meets the quality requirements for domestic edible use, through a marketing association for the 2 marketing years immediately preceding the current marketing year, if handlers have provided the producer with written offers, upon delivery, for the purchase of all the quota peanuts, at a price equal to or in excess of the quota support price. If a producer is rendered ineligible for quota price support under this or any other provision, the producer may appeal the ineligibility determination utilizing procedures provided in part 780 of this title.

(5) That is not ineligible for a price support loan under any other provision of law or regulation.

*Export and exportation.* A shipment of peanuts or peanut products from the United States that is directed to a country outside the United States for which a statement, which is signed by the handler and specifies the name and address of the consignee, is made available to the marketing association or CCC, or, upon request by the marketing association or CCC, for which a consignee receipt is made available to the marketing association or CCC.

*Farmers stock peanuts.* Picked or threshed peanuts produced in the United States which have not been changed (except for removal of foreign material, LSK's, and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers, plus any LSK's that are removed from farmers stock peanuts before such farmers stock peanuts are marketed.

*Foreign material (FM).* Anything other than peanuts, which is found in farmers stock peanuts.

*Fragmented peanuts.* Peanuts meeting the qualifications for fragmented peanuts as defined in the outgoing quality regulations of the Peanut Marketing Agreement (No. 146) applicable to the

crop year in which the peanuts were produced.

*Handler.* Any person that acquires peanuts for resale, domestic consumption, processing, exportation, or crushing through a business involved in buying and selling peanuts or peanut products.

*In-shell peanuts.* Cleaned peanuts in the shell which are mature, dry and free from:

- (1) LSK's,
- (2) Dirt or other foreign material,
- (3) Pops,
- (4) Paper ends, and
- (5) Damage caused by cracked or broken shells.

*Inspector.* A Federal or Federal-State inspector authorized or licensed by the Administrator, Agricultural Marketing Service, United States Department of Agriculture (USDA), to grade peanuts.

*Liquidated damages.* An amount due, but not as a penalty, as an amount estimated to be the probable damage to the peanut price support program when a producer or handler has taken an action that is contrary to the regulations in this part and a determination is made in accordance with such regulations that such action may damage the administration or efficiency of the price support program.

*Loan rate.* The applicable national average support rate announced by the Secretary for quota or additional peanuts for the current year, as adjusted for differences in grade, type, quality, location and other factors.

*Loan value.* For eligible farmers stock peanuts, the amount determined by multiplying the applicable loan rate, as determined for the applicable marketing category, by the net weight of such peanuts that are pledged as collateral for a price support loan.

*Loose shelled kernel (LSK).* Peanut kernels or portions of kernels determined by official inspection to be free of their hulls and scattered in farmers stock peanuts.

*Lot—(1) Farmers stock peanuts.* That quantity of farmers stock peanuts for which one form FSA-1007 or other inspection certificate is issued. For farmers stock peanuts delivered to the marketing association for a price support loan advance, a lot shall consist of the contents of one vehicle, except that a

lot may consist of the contents of two or more vehicles if the contents of such vehicles do not exceed a total of approximately 24,000 pounds of peanuts.

(2) *Milled peanuts.* That quantity of milled or shelled peanuts for which one form FV-184-9 or substitute approved for general use by the Executive Vice President, CCC, is issued. The lot size of such peanuts in bulk or bags shall not exceed 200,000 pounds.

*Marketing association.* An area marketing association selected and approved by the Secretary which is operated primarily for the purpose of conducting loan activities as provided for in this part. The approved area marketing associations and the areas served by such associations are as follows:

(1) *GFA Peanut Association of Camilla, Georgia (GFA).* GFA serves the Southeastern area consisting of Puerto Rico, the U.S. Virgin Islands, and the States of Alabama, Florida, Georgia, Mississippi and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers;

(2) *Peanut Growers' Cooperative Marketing Association of Franklin, Virginia (PGCMA).* PGCMA serves the Virginia-Carolina area consisting of the District of Columbia, and the States of Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, Wisconsin and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers; and

(3) *Southwestern Peanut Growers Association of Gorman, Texas (SWPGA).* SWPGA serves the Southwestern area consisting of the States of Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Louisiana, Montana, Nebraska, New Mexico, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington and Wyoming, and all other territories of the United States not listed in paragraphs (1) or (2).

*Marketing card.* Form FSA-1002, Peanut Marketing Card, that has been issued in accordance with part 729 of this title for use, at the time of each

initial marketing of peanuts from a farm, to identify the farm on which such peanuts were produced and to provide other pertinent information that may be required when such peanuts are marketed.

*Marketing penalties*—(1) *Producer*. For producers, the penalties prescribed in part 729 of this title.

(2) *Handler*. For handlers, the penalties which are prescribed, computed, assessed and collected in accordance with this part and are effective for the applicable crop.

*Marketing year*. The 12-month period beginning on August 1 of a year in which the peanuts are planted and ending on July 31 of the following year.

*Net weight*. Unless otherwise specified in this part, the gross weight of a lot of farmers stock peanuts, as recorded on the form FSA-1007, less:

(1) The weight of any foreign material in such lot; and

(2) The amount determined by subtracting 7 percentage points from any percentage of moisture in excess of 7 percent and multiplying the result by the gross weight of such lot excluding foreign material.

*Nonphysical supervision*. Supervision of the disposition of additional peanuts whereby representatives of the marketing association or other representatives of the Secretary can determine, in accordance with this part, whether additional peanuts purchased for crushing or export have been disposed of in accordance with the provisions of this part without the “physical” presence of such representatives to verify the actual handling and disposition of such peanuts. Such supervision shall be conducted in accordance with this part and shall consist of the review and analysis of records which handlers are required to make available to representatives of the Secretary for the verification of proper disposition of additional peanuts under this supervision option.

*Other kernels (OK)*. The kernels in farmers stock peanuts which pass through screens to separate them from the sound mature kernels, but excluding sound split kernels, damaged kernels, and broken pieces less than  $\frac{1}{4}$  of a whole kernel.

*Participating warehouse*. A storage facility whose owner or operator has entered into a peanut receiving and warehouse contract agreeing to the provisions of such contracts for the care, storage and delivery of peanuts pledged to CCC as collateral for price support loans.

*Peanut meal*. Any meal, cake, pellets, or other forms of residue remaining after extraction or expulsion of oil from peanut kernels, but not including pressed peanuts.

*Peanut product*. Any product, other than peanut oil or peanut meal, that is manufactured or derived from peanuts including, but not limited to, peanut candy, peanut butter, treated seed peanuts, roasted peanuts (either shelled or in-shell), pressed peanuts, and peanut granules.

*Peanut receiving and warehouse contract*. Form CCC-1028, Peanut Receiving and Warehouse Contract (Identity Preserved Storage), or form CCC-1028-A, Peanut Receiving and Warehouse Contract (Commingled Storage), or any other form approved for general use by CCC for the purpose of receiving and warehousing loan collateral peanuts.

*Physical supervision*. The supervision, in accordance with this part, by representatives of the marketing association or other representatives of the Secretary of the handling and disposition of contract additional or CCC stocks of additional peanuts which have been sold for crushing or export. Such supervision requires, as provided for in this part, the “physical” presence of such representatives to observe the actual handling, loading, shelling, transportation, processing, and exportation of peanuts which have been purchased or otherwise designated as additional peanuts.

*Pools*. Accounting pools established by the marketing association in accordance with this part for peanuts that have been pledged as collateral for price support loans.

*Quota loan rate*. The price support loan rate that is applicable to a lot of quota peanuts.

*Quota peanuts*. Peanuts which are:

- (1) Eligible for domestic edible uses; and
- (2) Marketed or considered marketed from a farm as quota peanuts pursuant

to the provisions of part 729 of this title and are not in excess of the effective farm poundage quota established for the farm on which such peanuts were produced.

*Raw peanuts.* In-shell peanuts, shelled peanuts, blanched peanuts, or any other classification of peanuts as designated by CCC which have not passed through any other processing operations.

*Segregations.* For purposes of the peanut price support program, farmers stock peanuts shall be identified by 1 of 3 segregations, as identified and determined by the Federal-State Inspection Service, as follows:

(1) *Segregation 1.* Segregation 1 peanuts are farmers stock peanuts which are free from visible *Aspergillus flavus* mold and which:

- (i) Have at least 99 percent peanuts of one type;
- (ii) Have not more than:
  - (A) 2.49 percent damaged kernels (rounded to nearest whole number);
  - (B) 1.00 percent concealed damage caused by rancidity, mold or decay;
  - (C) 0.50 percent freeze damage;
  - (D) 14.49 percent LSK's; and
- (iii) Are free from any offensive odor.

(2) *Segregation 2.* Segregation 2 peanuts are farmers stock peanuts which are free from visible *Aspergillus flavus* mold and which either:

- (i) Have less than 99 percent peanuts of one type; or
- (ii) Have more than:
  - (A) 2.49 percent damaged kernels (rounded to the nearest whole number); or
  - (B) 1.00 percent concealed damage caused by rancidity, mold, or decay;
  - (C) 0.50 percent freeze damage; or
  - (D) 14.49 percent LSK's; or
- (iii) Have an offensive odor.

(3) *Segregation 3.* Segregation 3 peanuts are farmers stock peanuts which, upon visible inspection, are found to contain *Aspergillus flavus* mold: *Provided further, however,* That, in accordance with such written instructions as the Director may issue, the Director shall permit producers at approved buying points as specified by the Director to have the Segregation 3 lot reconditioned, one time only, and then reinspected visually. If the buying point where the peanuts were initially deliv-

ered does not have adequate cleaning facilities, CCC may approve an alternative buying point for cleaning and reinspection. The visual reinspection may not occur more than 72 hours from the initial inspection except as permitted by the Director and the second grade shall be considered the final grade for the farmers stock peanuts.

*Sound mature kernel (SMK).* A whole kernel which rides the screen officially designated for the peanut type and as identified and determined by the Federal-State Inspection Service to be SMK's.

*Sound split (SS) kernel.* A peanut kernel which is a split or broken kernel as identified and determined by the Federal-State Inspection Service to be a SS kernel.

*Support rate—(1) National average.* The national average price support rate for quota peanuts, for each of the 1996 through 2002 crops, shall be \$610.00 per ton. The national average price support rate for additional peanuts, for each of the 1996 through 2002 crops, shall be the rate announced by the Secretary as set out in §1446.310.

(2) *By types.* With respect to each of the types of peanuts, the price support rate by type shall be the rate so announced on an annual basis by the Secretary for the particular type of peanuts on the basis of the differences between the types and the anticipated weighted average on a national basis of the quality factors and other factors affecting value for the respective types.

*Total kernel content (TKC).* The TKC of a lot of peanuts is the total of SMK's, SS kernels, and AO kernels in such lot.

*TPD.* The Tobacco and Peanuts Division of FSA.

*Treated seed peanuts.* Shelled peanuts that have been modified from their original shelled state by a treatment to make them suitable for seed purposes.

*Type.* The generally known genetic varieties or types of peanuts (i.e., Runner, Spanish, Valencia, and Virginia), as identified and determined by the Federal-State Inspection Service.

*United States.* The 50 States of the United States, Puerto Rico, the territories of the United States, and the District of Columbia.

*United States government agency.* Any department, bureau, administration, or other agency of the Federal Government or corporation wholly owned by the Federal Government.

*Valencia type peanuts produced in the Southwest that are suitable for cleaning and roasting.* Peanuts that are identified, determined and classified by the Federal-State Inspection Service as bright hull Valencia peanuts.

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**§ 1446.104 Performance based upon action or advice of a representative of the Secretary.**

The provisions of part 791 of this chapter with respect to performance based upon action or advice of any authorized representative of the Secretary shall be applicable to this part.

**§ 1446.105 Handling payments and collections not exceeding \$9.99.**

In order to avoid administrative costs of making small payments and handling small accounts, amounts of \$9.99 or less which are due the handler will be paid only upon the handler's request. Deficiencies of \$9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

**Subpart B—Basic Handler Operations**

**§ 1446.201 General handler provisions.**

(a) *Handler registration and approval.* To avoid marketing penalties otherwise provided in this part for failure to register as a handler, each person who plans to acquire peanuts for processing or resale must register as a handler and be approved as a handler in accordance with this paragraph.

(1) *Registration.* Registration must be made on the form FSA-1008, Application for Handler Card, and must be filed:

(i) For each marketing year in which such person expects to acquire peanuts for processing or resale.

(ii) With each marketing association that serves the marketing area in

which such person plans to acquire peanuts during the applicable marketing year.

(iii) Prior to the time such person acquires peanuts, during the respective marketing year, within the marketing area served by such marketing association.

(2) *Approval.* The determination of whether a handler will be approved shall be made by the applicable marketing association in which the registration was filed and, in the case of approval, such approval shall be evidenced by a handler registration number that is issued by such marketing association.

(b) *Handler of loan peanuts.* To handle loan peanuts, either quota or additional, a person must be approved as a handler and must contract with the marketing association on form CCC-1028 or form CCC-1028-A to handle such peanuts. To contract to handle loan peanuts, the handler must meet all requirements of the applicable warehousing contract with respect to receiving, handling and storing loan peanuts.

(c) *Handler of contract additional peanuts.* To handle contract additional peanuts in a marketing area, a person must be approved as a handler for that area in accordance with this part.

(d) *Marketing assessments and marketing penalties.* A handler shall collect and pay marketing assessments and marketing penalties in accordance with the provisions in part 729 of this title.

(e) *Penalties and other remedies.* Any handler that fails to register in accordance with this section shall be subject to all penalties that may apply to handlers under this part and all other remedies that apply against handlers. Further, such handler shall be subject to penalties for non-registration as may apply.

**§ 1446.202 Peanut buyer card and buying point card.**

(a) *Peanut buyer card.* The marketing association which approves a handler will assign a registration number to such handler and CCC will issue an embossed peanut buyer card which will show the handler's registration number, name and address. The handler